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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4294 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIEF OFFICER

Versus

HIRABHAI DAYALBHAI MAKWANA

Appearance:

MR YV SHAH for Petitioner

NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/11/2000

ORAL JUDGEMENT

The petitioner Municipality challenges the award of the Labour Court, Nadiad in Reference No. 131/84 made

on 28th August, 1991, whereby the respondent employee was ordered to be reinstated in service in his original capacity from 1985 with backwages at the rate of 20 per cent.

The reference was made to the Labour Court for the industrial dispute, as per the provisions of Section 10(1)(c) of the Industrial Disputes Act, on 26.4.1984, in respect of the claim of the workman that his termination after several years of service was effected without giving any notice. At the time of reference, according to the workman, his services were terminated abruptly on 13.4.1984 without instituting any domestic enquiry or giving any notice. During the proceedings before the Labour Court, evidence was led on the basis of which the Labour Court came to a finding that the workman had worked from 1969 upto 1980. Reliance was placed on the gratuity Form of the workman for coming to this finding. In paragraph 9 of the award, the Labour Court found that the reference was made four years after the services of the workman were terminated in the year 1980 and therefore, the workman was not entitled to any wages for the period between 1980 and 1984. Even for the period 1985 onwards, having regard to the facts and circumstances of the case, only 20 per cent of the backwages were ordered to be given to the workman on his reinstatement.

2. In the background of the above facts, the learned Counsel for the petitioner contended that when the workman at the time of seeking a reference had alleged that his services were terminated abruptly on 13.2.1984 and on the basis of the facts before the Labour Court it found that his services were terminated in 1980, no award could have been made in favour of the workman because in that event he could not have completed 240 days in the year immediately prior to the alleged termination, which was made on 13.2.1984 as per the claim of the workman at the time of seeking the reference. It was therefore submitted that there was no violation of the provisions of Section 25F of the said Act in the instant case because on the established facts the workman had not worked even for a single day prior to 13.2.1984, as his services were already terminated in 1980. This contention is wholly misconceived for the simple reason that the Labour Court, after the reference was made, was yet to decide as to whether the services of the workman were terminated and if so when. That finding could come only on the basis of the evidence that was to be led before the Labour Court and if on the basis of such evidence the Labour Court came to the conclusion that the

workman had served from 1969 to 1980 when his services was terminated, the period of 240 days was required to be computed only in the year preceding the date of his termination in the year 1980. Since it was found that he was in continuous service from 1969 to 1980, obviously the termination which was without payment of retrenchment compensation was illegal. There was no question of computing 240 days immediately preceding 13.2.1984, which was the date alleged by the workman as the date of his termination at the time of making of the reference. May be, the workman had, at the time of making the reference, given a wrong date to avoid a defence that the reference had become stale, but that issue is entirely different from the question of computing 240 days immediately prior to the date on which, as per the finding based on the evidence on record, his service came to be terminated. There is therefore, no substance in the only contention raised on behalf of the petitioner. The petition is therefore, rejected. Rule is discharged with no order as to costs.

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